

PLAINTIFF'S PROPOSED INSTRUCTION NO. 4 – RE RATIFICATION BY DELAY

If you find that Kanag'Iq is correct, and the contract was a unit price contract and was not modified, the plaintiff, GMW Fire Protection, Inc., claims that the defendant, Kanag'Iq Construction, Inc. has lost the right to claim that the original contract still exists and that it was a unit price contract since it did nothing after learning that GMW believed that it would be, and expected to be, paid the prices given on the price schedules it delivered before it began work on each delivery order.

The defendant has lost the right to assert that there was a unit price contract if you decide that both of the following things are more likely true than not true:

- (1) the defendant knew or had reason to know of the plaintiff's expectations; and
- (2) the defendant did not demonstrate to the plaintiff within a reasonable time thereafter an intention not to meet plaintiff's expectations.